

These are the tentative rulings for civil law and motion matters set for Thursday, July 10, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 9, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0051972 California Housing Finance Agency vs. Davidson, Nicholas P.

Defendant's Motion for Release of Funds is denied. Contrary to defendant's assertions in his moving papers, the stay granting in this case was not subject to CCP§1170.5. Instead, the stay was granted pending appeal and based upon defendant's ex parte application filed on May 9, 2012 where he sufficiently alleged extreme hardship. The condition of such a stay pending appeal is the mandatory requirement that the payment of reasonable monthly rent be deposited with the court. (CCP§1176(a).) The purpose of this condition is to prevent injury to the plaintiff from an unconditional stay. (see *Selma Auto Mall II v. Appellate Department* (1996) 44 Cal.App.4th 1672, 1686.) Defendant provides an insufficient legal basis for release of these funds to him when the purpose of the deposited monthly rental value was to benefit and protect plaintiff. For these reasons, the motion is denied.

2. M-CV-0059548 Diamond Well Drilling, Inc. vs. Auburn Ridge Woods, LLC

Defendant's Motion Requesting Additional Discovery is denied. Defendant has failed to sufficiently establish that it will not be able to prosecute its cross-complaint or defend itself in this action absent the requested additional discovery.

Defendant's request for telephonic appearance is granted. Counsel is informed that all telephonic appearances are governed by and must be arranged under Placer Court Local Rule 20.8. Further information on the telephonic appearance process under Local Rule 20.8 is available at www.placer.courts.ca.gov.

3. S-CV-0031797 Ludlow, Matthew et al vs. Ryland Homes of California, Inc

Intervenor American Zurich Insurance Company's unopposed Motion for Leave to File Complaint in Intervention is granted. Intervenor shall file and serve its complaint in intervention on or before July 25, 2014.

4. S-CV-0032754 Balko, Kathleen, et al vs. Beazer Homes Holdings Corp.

Intervenor Travelers Indemnity's unopposed Motion for Leave to Intervene is granted. Intervenor shall file and serve its complaint in intervention on or before July 25, 2014.

5. S-CV-0033000 Tabacco, Anthony, et al vs. William Lyon Homes, Inc.

Plaintiff's unopposed Motion for Consolidation is granted. Placer Court Case Nos. SCV-33665, Dean Dollaga, et al. v. William Lyon Homes, Inc., and SCV-34254, Jesse McClellan v. William Lyon Homes, Inc. are consolidated into the current Placer Court Case No. SCV-33000, Anthony Tabacco, et al. v. William Lyon Homes, Inc. Placer Court Case No. SCV-33000 shall be the lead case.

Plaintiff's request for telephonic appearance is granted. Counsel is informed that all telephonic appearances are governed by and must be arranged under Placer Court Local Rule 20.8. Further information on the telephonic appearance process under Local Rule 20.8 is available at www.placer.courts.ca.gov.

6. S-CV-0033202 Thomas, Mieko vs. Godfrey, Dawn R.

Plaintiff's Motion to Quash Subpoenas is granted. The request for sanctions is denied.

7. S-CV-0033350 Miles, Thomas, et al vs. Ford Motor Company

Defendant's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Defendant's request for judicial notice is granted.

Defendant's motion is denied in its entirety. A motion for summary judgment will be granted if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) The moving party must meet its initial burden. A moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action.

(CCP§437c(p)(2).) The trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (CCP§437c(p)(2).) The motion is viewed with these principles in mind.

Defendant's motion is based upon two essential arguments. The predominant argument is that each cause of action is barred by the statute of limitations. The second argument is that each cause of action is barred by the economic loss rule. The contention for both arguments is that plaintiffs lack any evidence to support their allegations. "Although resolution of a statute of limitations defense normally poses a factual question reserved to the trier of fact, summary adjudication will nonetheless be proper 'if the court can draw only one legitimate inference from uncontradicted evidence regarding the limitations question.'" [Citations.]" (*Stoltenberg v. Newman* (2009) 179 Cal.App.4th 287, 292.) Defendant sets forth the same material fact and references the same piece of evidence in support of its motion: "Plaintiffs do not possess evidence supporting their allegations that they are entitled to tolling of the statute of limitations. Evidence: Erskine Dec. ¶ 6, Ex. E." (Defendant's SSUMF Nos. 7, 14, 21, 28, 35.) The Erskine declaration states in paragraph 6: "Attached hereto as Exhibit E is Plaintiffs Thomas Miles and Rhonda Miles Responses to Ford Motor Company's Request for Production of Documents, as well as the documents produced by Plaintiffs pursuant to said responses. Exhibit D indicates that Plaintiffs were requested to provide all material that they reviewed when deciding to purchase the vehicle, and in response, produced only the sales contract, several repair invoices, and the certificate of title. To date, Plaintiffs have not produced additional discovery indicating any materials relied upon when making their purchase." (Erskine declaration ¶6.) This is the sum of material facts and evidence relied upon by defendant in its motion.

To reiterate, defendant must meet its initial burden and if it fails to do so, then there is no shifting of the burden to plaintiff. In reviewing paragraph 6 of the Erskine declaration, it is noted that there is no reference to the statute of limitations, despite the fact that each material fact in the separate statement specifically references the purported lack of evidence as it pertains to the statute of limitations. Furthermore, paragraph 6 generally refers to Exhibit D without specifying which responses deal with the statute of limitations. Upon review, most of the 34 responses and attached documents, if not all, do not relate to the statute of limitations. This evidence falls well below establishing "only one legitimate inference" as it pertains to the statute of limitations. (*Stoltenberg v. Newman* (2009) 179 Cal.App.4th 287, 292.)

Defendant has also failed to meet its burden as it pertains to its economic loss rule argument. Again, defendant presents the same, single material fact quoted previously to support this assertion. (Defendant's SSUMF No. 35.) This material fact refers to a lack of evidence to support tolling of the statute of limitations. Nowhere does the material fact reference a lack of evidence regarding the economic loss rule. However, when the evidence is actually reviewed, it generally refers to 34 responses to requests for

production of documents and attached documentation. Again, defendant has the initial burden of proof. Between the inaccurate material fact that generally refers to evidence which does not readily appear to address the economic loss rule, it cannot be determined that defendant has met its initial burden.

Finally, defendant seek summary adjudication as to each cause of action claiming there is no triable issue of fact as to misrepresentations, reliance on misrepresentations, or duty to disclose since plaintiffs do not possess evidence to establish these issues. Defendant, once again, relies on the same material facts stated above. (Defendant SSUMF Nos. 14, 21, 28.) To reiterate, these material facts reference only the tolling of the statute of limitations. The evidence referenced does generally cover the areas of misrepresentation, reliance on misrepresentation, and duty to disclose. However, the court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The inaccuracies in the separate statement and general references to the 34 discovery responses well short of establishing a lack of evidence to completely dispose of the first, second, third, fourth, and fifth causes of action. For these reasons, the motion is denied.

Plaintiff's request for telephonic appearance is granted. Counsel is informed that all telephonic appearances are governed by and must be arranged under Placer Court Local Rule 20.8. Further information on the telephonic appearance process under Local Rule 20.8 is available at www.placer.courts.ca.gov.

8. S-CV-0033568 Brown, Nicholas, et al vs. Brookview Ventures, LLC

Cross-Defendant Jeld-Wen's Demurrer is sustained in part with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

As to the first and second causes of action, both are based upon an alleged written contract. However, the causes of action do not set out the terms of the contract verbatim nor is a copy of the written contract attached to the cross-complaint. (*Otworth v. S. Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 458-459.) Furthermore, the legal effect of the contract is insufficiently pled in both causes of action. (*Construction Protective Services, Inc. v. TIG Specialty Insurance Co.* (2002) 29 Cal.4th 189, 198-199.) The third cause of action for equitable indemnity is also deficient since there are insufficient facts pled to establish that the claim is based upon a tort action. (*BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.* (2004) 119 Cal.App.4th 848, 852.) The demurrer is sustained with leave to amend as to the first, second, and third causes of action.

As to the fourth cause of action for declaratory relief, a reading of the cross-complaint as a whole shows that the action is sufficiently pled to withstand demurrer. The demurrer is overruled as to the fourth cause of action.

The first amended cross-complaint shall be filed and served on or before July 25, 2014.

9. S-CV-0033594 Turtleaub, Paula vs. Evergreen Advantage, LLC, et al

Defendant G.P. Stone's Motion for Summary Judgment is dropped from the calendar at the request of the moving party.

10. S-CV-0033674 Vicario, Phillip vs. Western Dental Services, Inc.

Defendant's unopposed Motion to Compel Further Responses to Discovery is granted. Plaintiffs shall provide verified responses and responsive documents, without objections, to form interrogatories nos. 2.5, 2.6, 2.7, 6.4, 6.5, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 9.1, 9.2, 10.2, 10.3, 12.1; special interrogatories nos. 4, 5, 10, 12, 20; and requests for production of documents nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14. Defendant's request for sanctions is denied.

11. S-CV-0033700 Wells Fargo Bank, N.A. vs. Arroyo, Pedro S., et al

Plaintiff's unopposed Motion to Amend Complaint is granted. Plaintiff shall file and serve its first amended complaint on or before July 25, 2014.

12. S-CV-0033784 Markevich, Anatoliy et al vs. Diaz, Thomas Russel

Defendant's Motion to Compel Discovery Responses is granted in part. Plaintiffs shall provide verified responses and responsive documents to form interrogatories, set one; special interrogatories, set one; requests for production of documents, set one; and requests for admissions, set one, on or before July 18, 2014. Defendant's request to deem the requests for admissions as admitted is denied. Defendant's request for sanctions is denied.

13. S-CV-0033842 Sweda, John L., et al vs. Ford Motor Company

Defendant's Demurrer to the Second Amended Complaint (SAC)

Defendant's demurrer is overruled. A party may demurrer a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no

matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The allegations in the SAC, when read as a whole, are sufficient to support the first, second, third, fourth, and fifth causes of action.

Defendant shall file and serve its answer or general denial on or before August 18, 2014.

Defendant's Motion to Strike the SAC

In reviewing defendant's motion, the court is not persuaded by defendant's assertion that the implied warranty claims are untimely. As discussed above, the SAC alleges sufficient facts to toll the statute of limitations. Therefore, the motion is denied.

Plaintiffs' Motion to Compel Further Discovery Responses

Plaintiffs' motion is granted in part. Defendant shall provide further verified responses and responsive documents, without objections, to RPDs nos. 9, 110, and 111. The motion is denied as to RPDs nos. 11 and 18. Plaintiffs' request for sanctions is denied.

Defendant's Motion for Protective Order

Plaintiffs' objections nos. 1, 2, and 3 are overruled. Defendant's objections are overruled in their entirety.

Defendant's motion is granted in part. Defendant is granted a protective order to the extent that plaintiffs are prohibited from proceeding with the deposition as noticed. Specifically, any deposition must be noticed at a location in relation to Ford's regional office based in San Ramon, California. In all other respects, the motion is denied. Plaintiffs' request for sanctions is denied.

14. S-CV-0034134 Nicolatti, Caroline vs. Future Ford Lincoln

The demurrer is continued to July 24, 2014 at 8:30 a.m. in Department 40 pursuant to the stipulation of the parties.

15. S-CV-0034390 Associated Indemnity Corp. vs. Ferrellgas, Inc.

The pro hac vice application of Christopher Pitman and the pro hac vice application of Michael McMullen are continued, on the court's own motion, to August 7, 2014 at 8:30 a.m. in Department 40. Both counsel shall file and serve a verified application with a proof of service giving notice to all parties pursuant to California Rules of Court, Rule 9.40(c)(1). The court file does not reflect that a verified application has been filed by either counsel. Nor is there a proof of service in the court's file for either application.

The Demurrer is continued, on the court's own motion, to July 24, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

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